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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,853	12/29/2003	Paul J. Datta	659-1713 (K-C Case No. 19	2759
757	7590	08/09/2006	EXAMINER ANDERSON, CATHARINE L	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			ART UNIT 3761	
			PAPER NUMBER	

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/747,853	<b>Applicant(s)</b> DATTA ET AL.	
	<b>Examiner</b> C. Lynne Anderson	<b>Art Unit</b> 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 and 24-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 18-21 and 23 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/29/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of claims 1-9 and 18-23 in the reply filed on 19 June 2006 is acknowledged. The traversal is on the ground(s) that the inventions are not distinct. This is not found persuasive because since the article of Group I is capable of being made by alternate methods to that claimed in Group II, Groups I and II are distinct.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 18-19, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaar (3,978,861).

Schaar discloses an absorbent article, as shown in figure 9, comprising a body chassis comprising a body panel C and an extension fold 48. The extension fold 48 is folded over defining a folded edge 50 along the waist edge, as shown in figure 9. The extension fold 48 has an overlying relationship with a first portion of the body panel, and terminates in a free edge 48A that is not connected to the body panel, as shown in figure 9. The body panel C has a second portion that is not in an overlying relationship with the extension fold 48, as shown in figure 9. An absorbent insert 36 is connected to

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the body panel C, and fastener members 61 connect to the body side surface of the extension fold 48 and the second portion of the body panel, as shown in figure 10A.

With respect to claim 2, the extension fold 48 is foldable between a first configuration, as shown in figure 9, and a second configuration, as shown in figure 13A, the second configuration having a greater length than the first.

With respect to claim 3-5, the garment side surface of the extension fold 48 is secured to the first portion of the body panel, as shown in figure 9, by means of adhesive 56. Adhesive is able to be released, and therefore the extension fold is releasably secured to the first portion.

With respect to claim 6, the fastener member 61 is a continuous element that extends from the body side surface of the extension fold to the second portion of the body panel, as shown in figure 10A.

With respect to claims 7 and 8, a second garment closing fastener member 56 is located on the body side surface of the second portion of the body panel, as shown in figure 2.

With respect to claim 18, the extension fold 48 is gathered by a first amount, which is greater than the gathering of the body panel, as shown in figure 9.

With respect to claim 19, the extension fold 48 is retractable a first distance, as shown in figure 13A, and a second distance, as shown in figure 12A, the first distance being greater than the second.

With respect to claim 23, the difference between the first and second distances is between 1-60% of the initial length of the extension fold 48 and first portion, as shown in figures 12A and 13A.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaar (3,978,861) in view of Fell et al. (2002/0169432).

Schaar discloses all aspects of the claimed invention with the exception of the body panel comprising front and rear body panels being spaced apart by a gap, wherein the absorbent insert bridges the gap. Fell teaches the equivalence of an absorbent article having front and rear body panels and an absorbent insert wherein the front and rear body panels are either spaced apart, as shown in figure 15, or connected through the crotch region, as shown in figure 12. Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to make the article of Schaar with the front and rear body panels spaced apart, since Fell teaches the functional equivalence of the front and rear body panels being either spaced apart or connected.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaar (3,978,861).

Schaar discloses all aspects of the claimed invention with the exception of the difference of the first and second distances being between 0.10 and 6.0 inches. Schaar remains silent to the length of the extension fold and to the overall length of the article. However, it would be obvious to one of ordinary skill in the art at the time of invention to make the difference between the first and second distances between 0.10 and 6.0 inches, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

***Allowable Subject Matter***

Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to disclose the claimed invention. Specifically, the closest prior art of record, U.S. Patent 3,978,861, fails to disclose any elastic elements in either the extension fold or the first portion of the article. U.S. Patent 6,083,212, made of record but not relied upon, teaches an article having an extension fold and a first portion, but the elastic members are located in the first portion of the article, and the extension fold is free of elastic, as shown in figures 2 and 3. Therefore, a greater number of elastic members in the extension fold than in the first portion, in combination with the remaining limitations of the claim, is not disclosed nor suggested in the prior art of record.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 6,083,212 and 6,254,583 disclose absorbent articles having folded waist portions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*CWA*

cla

August 4, 2006

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in cursive script, appearing to read 'Tatyana', written over the printed name and title.